

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY : No. 3071 Disciplinary Docket No. 3
COUNSEL :
Petitioner : No. 57 DB 2023
v. : Attorney Registration No. 205573
NATHANIEL EDMOND STRASSER : (Erie County)
Respondent :

ORDER

PER CURIAM

AND NOW, this 6th day of November, 2024, upon consideration of the Report and Recommendations of the Disciplinary Board and Respondent’s Petition for Review, Nathaniel Edmond Strasser is suspended from the Bar of this Commonwealth for a period of one year and one day. He shall comply with the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 11/06/2024

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 57 DB 2023
	:	
v.	:	Attorney Registration No. 205573
	:	
NATHANIEL EDMOND STRASSER, Respondent	:	(Erie County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all

disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent is Nathaniel Edmond Strasser, born in 1979 and admitted to practice law in the Commonwealth of Pennsylvania in 2007. Respondent is currently on active license status and maintains an office for the practice of law at 821 State Street, Erie, Pennsylvania 16501.
3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.
4. Respondent has no history of professional discipline.

The November 2, 2022 Preliminary Hearing Matter

5. At all times material hereto, Respondent served as an Assistant Public Defender with the Erie County Public Defender's Office. Ans. at ¶ 4.
6. On or about September 7, 2022, Allysen O'Connor was arrested and charged with, *inter alia*, DUI: Controlled Substance. This matter was thereafter docketed in Magisterial District Court 06-3-01 at MJ-06301-CR-0000288-2022 (hereinafter the "Criminal Proceedings"). Ans. at ¶ 5; ODC-1.
7. Respondent was assigned to represent Ms. O'Connor in the Criminal Proceedings. Ans. at ¶ 6; ODC-1 at 000002.
8. On November 2, 2022, Respondent appeared on behalf of Ms. O'Connor before Magisterial District Judge Lisa Ferrick for a preliminary hearing in the Criminal Proceedings. Ans. at ¶ 7; ODC-1 at 000003; N.T. 14-15.
9. Respondent's client waived the preliminary hearing. ODC-4, Exhibit A.
10. While Respondent was inside Magisterial District Court 06-3-01 on November 2, 2022, Pennsylvania State Police Trooper Chris Weber, the affiant in the Criminal

Proceedings, observed that Respondent, *inter alia*, “was very hyperactive, fidgety,” and “put his sunglasses on and kept his sunglasses on during the duration while he was in Judge Ferrick’s office.” N.T. 14-17.

11. Trooper Weber has served as a Drug Recognition Expert for the Pennsylvania State Police since 2019, *Id.* at 13, which informed Trooper Weber’s observations of Respondent on November 2, 2022. N.T. 15-16 (“based off my experience and training...”).

12. Following the November 2, 2022 preliminary hearing, Trooper Weber approached Respondent in the parking lot of Magisterial District Court 06-3-01, at which time, *inter alia*:

- (a) Trooper Weber advised that he could not let Respondent drive because he was under the influence of a stimulant;
- (b) Respondent advised that he would not submit to any field sobriety tests; and
- (c) Respondent advised that he would not submit to any blood analysis.

N.T. 17-19. *See also* Ans. at ¶ 10(a)(c).

13. During his interaction with Respondent in the parking lot of Magisterial District Court 06-3-01, Trooper Weber observed that, *inter alia*:

- (a) Respondent’s pupils were dilated;
- (b) one of Respondent’s nostrils had hair in it, while the other nostril was hairless and inflamed; and
- (c) Respondent’s nose was bleeding.

N.T. 17-20 (“it was a bright day, midday, bright, sunny sky, little to no clouds, and [Respondent’s] pupils were so large that I couldn’t tell you what color his eyes were”).

See *also* Ans. at ¶ 11(a).

14. After Respondent’s interaction with Trooper Weber in the parking lot of Magisterial District Court 06-3-01, Nicole D. Sloane Kondrlik, Esquire, Erie County Chief Public Defender, arranged for Respondent’s transportation from Magisterial District Court 06-3-01. Ans. at ¶ 12.

15. On November 2, 2022, at Ms. Sloane Kondrlik’s request, Respondent submitted to a drug test. Ans. at ¶ 13.

16. This drug test was positive for cocaine. Ans. at ¶ 14; ODC-2.

17. Respondent was under the influence of cocaine at the time he appeared for the preliminary hearing on behalf of his client. ODC-2; N.T. 14-19, 38-39. See *also* N.T. 32 (“based off of everything I saw that day, you [Respondent] were impaired”).

18. On or about November 21, 2022, the Erie County Public Defender’s Office terminated Respondent’s employment. Ans. at ¶ 15.

19. Respondent was not charged with a criminal offense.

20. By letter to Respondent dated December 27, 2022, Petitioner requested Respondent’s Statement of Position regarding allegations that he, *inter alia*, appeared for the November 2, 2022 preliminary hearing while under the influence of cocaine. ODC-3.

21. By letter to Petitioner dated January 25, 2023, Respondent provided his Statement of Position. ODC-4. Respondent conceded therein that “[c]ocaine was in [his] system” when he appeared for the November 2, 2022 preliminary hearing. ODC-4 at 000010 (¶ 11).

The Disciplinary Proceeding at No. 57 DB 2023

22. On April 10, 2023, Petitioner filed a Petition for Discipline alleging Respondent's misconduct and charging him with violations of Rules of Professional Conduct 1.16(a)(2) and 8.4(b).
23. Respondent filed an Answer to Petition for Discipline on May 1, 2023, and denied violating the charged rules.
24. A prehearing conference was held on July 13, 2023, at which Respondent appeared pro se. A Prehearing Order issued on July 13, 2023 established deadlines for, *inter alia*, the identity and exchange of proposed exhibits and the identity of proposed witnesses, including expert witnesses.
25. A District IV Hearing Committee ("Committee") held a disciplinary hearing on September 18, 2023.
26. During the adjudicatory phase, Petitioner introduced exhibits ODC-1 through ODC-4 and presented the testimony of Pennsylvania State Police Trooper Chris Weber.
27. The testimony of Trooper Weber was credible. N.T. 11-40.
28. Respondent appeared pro se. Respondent introduced exhibit Respondent-A during his cross-examination of Trooper Weber, but did not present any testimony or exhibits in his case-in-chief.
29. The Committee found, pursuant to Disciplinary Board Rule § 89.151, that the evidence it received established a *prima facie* violation of at least one of the rules charged in the Petition for Discipline. N.T. 49.
30. The hearing moved to the discipline phase. Petitioner presented no additional testimony or exhibits. Respondent testified on his own behalf in mitigation, but presented no additional testimony or exhibits.

31. Respondent referenced past involvement with Alcoholics Anonymous and Narcotics Anonymous but insisted it was strictly for alcohol, that he was not using cocaine at that time, and that he has not had a drink in seven years. N.T. 51, 52.
32. Respondent testified that his problems are not related to addiction and for that reason he has not done any addiction programs. N.T. 51 (“Now, in regards to any 12 Step programs or anything like that, that’s only for addiction, and my problems aren’t really addiction...Everybody who has drugs in their system is not an addict. Okay? And so, that’s why I haven’t taken any steps, you know, to do that, because I have done those in the past.”)
33. Respondent further testified that he does not use drugs anymore and is not an addict. N.T. 53.
34. The Committee Chair questioned Respondent to clarify his testimony that he was not addicted to drugs, used drugs occasionally, and that was why he was not doing a 12 Step program, to which Respondent replied, “Yeah, I’m not an addict.” N.T. 52, 53.
35. Respondent referenced that after “this” happened, meaning the instant disciplinary issues, he contacted a counselor he used to treat with prior to the Covid pandemic, and still talks to the counselor on occasion. N.T. 50. However, Respondent testified that the reasons for seeing the counselor “had nothing really to do with drugs.” *Id.*
36. Respondent failed to accept responsibility or express remorse for appearing at the November 2, 2022 preliminary hearing and representing his client while under the influence of cocaine. *See, generally*, N.T. 50-53. *See also* Ans. at ¶ 16 and Section IV(B) *infra*.

37. Following the close of the record on September 18, 2023, on November 15, 2023, Petitioner filed a brief to the Committee and requested that the Committee recommend to the Board that Respondent be suspended for one year and one day.
38. Respondent obtained counsel at some point following the close of the record and on November 17, 2023, filed a Motion to Present Additional Testimony to the Committee. The proffered testimony related to Respondent's history of substance abuse and treatment prior to the disciplinary proceeding.
39. On November 22, 2023, Petitioner filed an Answer opposing the Motion on the basis, *inter alia*, that Respondent's history of substance abuse and treatment was not an appropriate basis upon which to reopen the evidentiary record in this matter, under Disciplinary Board Rule § 89.251(a).¹
40. By Order dated November 30, 2023, the Committee Chair denied Respondent's Motion.
41. On January 3, 2024, Respondent filed a brief to the Committee stating that Respondent "is in fact an addict" with a "history of substance abuse." See, Brief of Respondent at pp. 1-2. Respondent requested that the Committee recommend that he be placed on substance abuse probation for a period of two years.
42. On January 4, 2024, Respondent filed with the Board a Motion Requesting the Board to Direct the Hearing Committee to Consider Evidence of Mitigation, seeking to present evidence of treatment he received between September 2018 and February 2019, more than four years prior to the disciplinary hearing in September 2023.

¹ Disciplinary Board Rule § 89.251(a) provides, in pertinent part, "[a]t any time after the conclusion of a hearing in a proceeding ... any participant may file with the hearing committee ... a petition to reopen the proceeding for the purpose of taking additional evidence. Such petition shall set forth clearly the acts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or law alleged to have occurred since the conclusion of the hearing."

43. On January 4, 2024, Petitioner filed an Answer opposing the Motion on the basis, *inter alia*, that the Motion failed to identify any material changes of fact or law alleged to have occurred since the conclusion of the hearing.
44. By Order of January 8, 2024, the Board Chair denied Respondent's Motion.
45. By Report filed on March 20, 2024, the Committee concluded that Respondent violated the Rules of Professional Conduct charged in the Petition for Discipline and recommended that he be suspended for a period of one year and one day.
46. On April 4, 2024, Respondent filed a Brief on Exceptions and requested oral argument before the Board.
47. On April 18, 2024, Petitioner filed a Brief Opposing Exceptions.
48. A three-member panel of the Board held oral argument on July 9, 2024.
49. The Board adjudicated this matter at the meeting on July 23, 2024.

II. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct ("RPC"):

1. RPC 1.16(a)(2) - A lawyer shall not represent a client, or where representation has commenced, shall withdraw from the representation of a client if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.
2. RPC 8.4(b) - It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

III. DISCUSSION

The Board's review of this matter follows oral argument on Respondent's exceptions to the Committee's unanimous recommendation to suspend his license to practice law for one year and one day. Respondent seeks to reopen the record for the consideration of evidence to support placing him on substance abuse probation; Petitioner opposes Respondent's exceptions and supports the Committee's recommended discipline.

In disciplinary matters, Petitioner bears the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. *Office of Disciplinary Counsel v. Lawrence J. DiAngelus*, 907 A.2d 452, 456 (Pa. 2006). Upon our independent review, we conclude that Respondent's exceptions have no merit, and for the reasons set forth below, we further conclude that the record before us amply demonstrates Respondent's violation of RPC 1.16(a)(2) and 8.4(b) and supports the recommended discipline of a one year and one day suspension.

The facts of this matter are straightforward. On November 2, 2022, on behalf of a client charged with driving under the influence of a controlled substance, Respondent appeared for a preliminary hearing before a magisterial district judge while under the influence of cocaine. At the proceeding, Respondent participated and advised his client to waive the hearing, which she did. Trooper Weber, the affiant in the criminal matter and a trained Drug Recognition Expert for the Pennsylvania State Police since 2019, observed Respondent's appearance and behavior in the magistrate's office that indicated to him that Respondent was under the influence of a substance and approached Respondent in the parking lot after the proceeding. Trooper Weber's subsequent observations and interaction with Respondent informed his determination that

Respondent was impaired and not capable of driving. Later that day, Respondent submitted to a drug test, which was positive for cocaine. The Erie County Public Defender's office subsequently terminated Respondent's employment. Respondent's misconduct reflects adversely on his fitness to practice law and warrants discipline.

Respondent was unrepresented by counsel from the commencement of the disciplinary proceedings against him through his disciplinary hearing on September 18, 2023. During his case-in-chief, Respondent did not present any witness testimony, including his own. Respondent did not contest that he had cocaine in his system when he appeared at the preliminary hearing, but denied that he is an addict. Respondent vaguely referenced prior counseling for issues unrelated to drugs and past participation in Alcoholics Anonymous and Narcotics Anonymous meetings for alcohol use, but he did not offer any evidence that he currently is receiving substance abuse treatment. Instead, Respondent testified that he has not taken any steps to undergo such treatment as "everybody who has drugs in their system is not an addict." N.T. 51. Respondent did not express remorse for representing his client at a criminal proceeding while under the influence of cocaine, nor did he accept responsibility and demonstrate any understanding that his actions were wrong and harmful to his client and the legal profession.²

Subsequent to the disciplinary hearing, Respondent obtained counsel and attempted to reopen the record on two occasions prior to the filing of the Committee's

² Respondent's cross-examination of Trooper Weber focused on the idea that cocaine enhanced Respondent's performance as an attorney. *See, e.g.* N.T. 24 (Respondent) ("And essentially - - cocaine, actually, if you read - - if you read that, it - - it - - it increases your awareness; correct?"). *See also, e.g.* N.T. 42 (Respondent) ("cocaine has a positive effect on one's cognitive abilities in low doses...My mental awareness was at a heightened state, not a lower state"). *But compare* N.T. 29 (Trooper Weber) ("yeah, you [Respondent] had severe focus, but you were - - it appeared that you were focusing on a hundred things and couldn't quite figure out what was important at the time").

Report to permit testimony regarding his substance abuse and treatment from years ago. Petitioner opposed both requests, primarily on the basis that the proffered evidence was known to Respondent from the inception of the disciplinary proceedings and therefore was not a material change of fact or law that occurred since the conclusion of the hearing. Both the Committee and the Board Chair denied the respective requests to reopen the record.

In his exceptions to the Committee's Report and recommendation and at oral argument before the Board panel, Respondent again asks that the Board reopen the record to permit him to present evidence in support of his request for substance abuse probation. After considering Respondent's arguments, we conclude that there is no basis under the disciplinary rules that would permit the Board to reopen the record. Respondent has failed to support his request with any material change of fact or law alleged to have occurred since the conclusion of the hearing. The evidence Respondent seeks to offer existed prior to his disciplinary proceeding and he had a full and fair opportunity to present it. Respondent did not do so; rather, he disavowed the existence of a substance abuse issue, explicitly denying that he is a drug addict and testifying that he does not use drugs and his problems are not related to addiction. Now, after obtaining counsel, Respondent attempts to reverse course to show that he suffers from an addiction that caused his misconduct and should be placed on probation rather than suspended from practice, as the Committee has recommended. In our view, reopening the record to permit Respondent to submit his proffered evidence would set an untenable precedent, as it would allow other similarly situated respondents to take their chances at a hearing, assess the outcome, and if they are dissatisfied, reopen the record to present evidence that was readily available to be presented but was not.

Having concluded that Respondent violated the ethical rules charged in the Petition for Discipline, we turn to the appropriate quantum of discipline to address his serious misconduct. In reviewing the general considerations governing the imposition of final discipline, it is well-established that disciplinary sanctions serve the dual role of protecting the public from unfit attorneys and maintaining the integrity of the legal system. *Office of Disciplinary Counsel v. John Keller*, 506 A.2d 872, 875 (Pa. 1986). Another compelling goal of the disciplinary system is deterrence. *In re Dennis Iulo*, 766 A.2d 335, 338, 339 (Pa. 2001). The Board also recognizes that the recommended discipline must reflect facts and circumstances unique to the matter, including circumstances that are aggravating or mitigating. *Office of Disciplinary Counsel v. Anthony C. Cappuccio*, 48 A.3d 1231, 1238 (Pa. 2012). And importantly, while there is no per se discipline in Pennsylvania, the Board is mindful of precedent and the need for consistency in discipline. *Office of Disciplinary Counsel v. Robert Lucarini*, 472 A.2d 186, 189-91 (Pa. 1983).

Considering this record, we find in aggravation that Respondent failed to accept responsibility for his misconduct, lacked appreciation that his appearance at a criminal proceeding on behalf of a client while under the influence of cocaine was harmful to his client and the integrity of the legal profession, and notably failed to express any remorse. We further find that Respondent has practiced law in Pennsylvania since 2007 and has no record of prior discipline, a mitigating factor.

Next, turning to relevant case precedent involving drugs, we find numerous cases in which respondents have been convicted of drug offenses, as well as a small number of cases that involve drug use absent a conviction, but find no cases comparable to the instant matter. The sanctions imposed in previous matters range from private

reprimand to disbarment, with the outcomes dependent on the specific aggravating and mitigating factors. On our review, the facts of matters that resulted in lengthy suspensions or disbarment are much more egregious than in the case at bar, as they involve convictions for conspiracy to distribute drugs, possession of drugs, or possession with intent to distribute drugs, often times multiple counts.³ These cases confirm that a sanction of that degree of severity is not indicated here.

We note the following cases. In a matter that resulted in private discipline, *In re Anonymous No. 42 DB 87*, 5 Pa. D. & C. 4th 613 (1987), an attorney was disciplined for his occasional cocaine use. Therein, the attorney was not charged with any crime, but testified as a government witness in a trial of accused drug dealers. Unlike the instant matter, the only evidence of the attorney's cocaine use was his testimony at the trial, and no clients were involved. Further, the attorney offered evidence at the disciplinary proceedings that he became extensively involved in programs directed against abuse of drugs and alcohol. Due to the extensive mitigation, the Board imposed a private reprimand.

In *Office of Disciplinary Counsel v. Harry M. Ness*, No 60 DB 1983, 33 Pa. D. & C. 3d 187 (1984), Ness was convicted of simple possession of one-quarter ounce of cocaine received as a wedding present. The Board found that Ness was a "social user" of cocaine and associated with known drug dealers. Ness served as an assistant district attorney and public defender during his period of cocaine use. Upon the Board's

³ See *Office of Disciplinary Counsel v. Ashly Mae Wisher*, No. 118 DB 2005 (D. Bd. Rpt. 6/14/2006) (S. Ct. Order 9/28/2006) (two convictions of possession of heroin; two year suspension from the practice of law); *Office of Disciplinary Counsel v John Mark Logue*, No. 52 DB 1997 (D. Bd. Rpt. 6/24/1998) (S. Ct. Order 8/17/1998) (one count of possession with intent to distribute cocaine on three occasions; three year suspension from the practice of law); *Office of Disciplinary Counsel v. Roger M. Simon*, 507 A.2d 1215 (Pa. 1986) (disbarment for conspiracy to distribute and possession with intent to distribute cocaine).

recommendation, the Court imposed a one year suspension, which under the disciplinary rules at that time required a formal reinstatement proceeding, similar to the present sanction of a one year and one day suspension.

The Court imposed a one year and one day suspension in *Office of Disciplinary Counsel v. Edward John Mimmagh*, 185 DB 2006 (D. Bd. Rpt. 11/27/2007) (S. Ct. Order 5/5/2008), for Mimmagh's solicitation and purchase of cocaine for \$200 from a client. Mimmagh was not charged with any crime, but the client and the client's accomplice were both charged for their role in the criminal activity. In mitigation, Mimmagh, who had no prior record of attorney discipline, contended that he solicited and purchased cocaine to manage an aggravated episode of a medical condition brought on by stress. However, the Board concluded that Mimmagh failed to establish by clear and convincing evidence pursuant to *Office of Disciplinary Counsel v. Seymour Braun*, 553 A.2d 894 (Pa. 1989), that his medical condition caused his misconduct and thus did not credit Mimmagh's explanation as a mitigating circumstance. The Board concluded from the evidence that Mimmagh was aware of the criminality of his actions and chose his course of conduct.

Finally, we review the recommendations of the Committee and the parties in the framework of the decisional law. The Committee recommends a one year and one day suspension, as advocated by Petitioner, while Respondent seeks substance abuse probation. As to Respondent's request, under Disciplinary Board Rule § 89.293(b), in cases of drug or alcohol abuse, the Board may place an attorney on substance abuse probation with a sobriety monitor. In order to be eligible for such probation, a respondent must prove by clear and convincing evidence that the drug or alcohol abuse was a factor in causing his or her misconduct. Here, the record is devoid of evidence that Respondent

abused drugs and that such abuse was a factor in causing his misconduct. See N.T. 53 (“Yeah, I am not an addict.”). The record further demonstrates that Respondent is not presently attending any 12 Step meetings for the self-expressed reason that he does not have a drug addiction. See N.T. 51 (“In regards to any 12 Step program or anything like that, that’s only for addiction, and my problems aren’t really addiction.”). Upon this record, we conclude that Respondent is not eligible for substance abuse probation, as he denies having a substance abuse problem.

While we recognize that none of the cited cases are substantially similar to the instant matter, the cases inform our determination that public discipline in the form of suspension is warranted to address Respondent’s serious misconduct. We agree with the Committee’s reasoned assessment of a one year and one day suspension based on the nature of Respondent’s misconduct and his failure to express any remorse for his actions in representing a client while under the influence of cocaine. This sanction addresses the gravity of Respondent’s actions and is consistent with the range of discipline meted out in prior matters involving drug use and drug offenses. And, a one year and one day suspension requires that Respondent prove his fitness by clear and convincing evidence before resuming the practice of law, thereby meeting the goals of our disciplinary system to protect the public and maintain the integrity of the bar, and by extension impressing upon Respondent the gravity of his actions and serving as a deterrent to future unethical behavior.

IV. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Nathaniel Edmond Strasser, be Suspended for one year and one day from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: */s/ Gaetan J. Alfano*
Gaetan J. Alfano, Member

Date: 08/07/2024

Members Ellsworth and Vance recused.